

**REPORT OF JENNY CLIFFORD THE HEAD OF PLANNING AND REGENERATION.**

**AN OVERVIEW OF THE EXPENDITURE OF S106 CONTRIBUTIONS WITHIN MID DEVON.**

**Cabinet Member(s):** Cllr Richard Chesterton  
**Responsible Officer:** Mrs Jenny Clifford, Head of Planning and Regeneration

**Reason for Report:** At their meeting on 12<sup>th</sup> September 2016, Members resolved that a report should be brought before them providing an overview of the expenditure of s106 contributions. It is understood that this requested report is to provide an overview of the S106 process in collecting financial contributions from development via the planning system.

**RECOMMENDATION: That Members note the contents of this report.**

**Relationship to Corporate Plan:** The primary purpose of the planning system is to regulate the use and development of land in the public interest. The collection of financial contributions from development to be spent within the district can assist with the delivery of Corporate Plan priorities of community, housing, economy and environment

**Financial Implications:** Financial contributions which are collected must be spent in accordance with the terms of the legal agreement and the Council's adopted policy otherwise there is a risk that developers could request a refund of all monies paid.

**Legal Implications:** The use of s106 agreements is regulated by s122 of the Community Infrastructure Levy Regulations 2010. A planning obligation may only form a reason for granting planning permission if it is:

- a) Necessary to make the development acceptable in planning terms;
- b) Directly related to the development, and
- c) Fairly and reasonable related in sale and kind to the development.

Under s123 of the Community Infrastructure Levy Regulations 2010, the Council is also only able to pool up to 5 separate planning obligations for the funding of an infrastructure project or type. This applies to those entered into since 6<sup>th</sup> April 2014.

Limitations are also in place over tariff style infrastructure contributions and affordable housing dependent upon the scale of the development and its location. These were introduced by the Government in November 2014 and reported to Cabinet at the December 2014 meeting. They were subsequently overcome via legal challenge, but have recently been reinstated via High Court ruling.

**Risk Assessment:** The authority has a s106/CIL Monitoring Officer in post to ensure that financial contributions are collected, recorded and spent in accordance with the legal agreement and the Council's adopted policy.

## 1.0 Introduction

1.1 Planning obligations under Section 106 of the Town and Country Planning Act 1990 (as amended), commonly known as s106 agreements, are legal agreements between Local Authorities and developers specifically in relation to planning applications. Planning obligations may also take the form of a unilateral agreement, whereby the land owner or developer makes a legal agreement. In this latter type, the Council is not a signatory.

- 1.2 Planning obligations are used when it is considered that a development will have significant impacts on the local area that cannot be moderated by means of conditions attached to a planning decision.
- 1.3 For example, a new residential development can place extra pressure on the social, physical and economic infrastructure which already exists in a certain area. A planning obligation will aim to balance the pressure created by the new development with improvements to the surrounding area ensuring that where possible the development would make a positive contribution to the local area and community. This could either be by carrying out works in the local area or providing a financial contribution towards something relevant in the area

## 2.0 **Circumstances when it is appropriate to use a planning obligation**

2.1 The content of the planning obligation will vary depending on the nature of the development and the policies of the District. It can:

1. Restrict the development or use of the land in any specified way
2. Require specified operations or activities to be carried out in, on, under or over the land
3. Require the land to be used in any specified way; or
4. Require a sum or sums to be paid to the authority on a specified date or dates or periodically.

2.2 The most common planning obligations used in Mid Devon are for the collection of monies towards a) the provision, or improvement of Public Open Space across the district and b) the improvement of air quality in the Air Quality Management Areas in Crediton and Cullompton. These are collected in relation to planning applications for new dwellings in accordance with the Supplementary Planning Documents (SPD) 'The provision and funding of open space through development (adopted May 2008)' and 'Air Quality and Development' (adopted May 2008).

2.3 On larger developments, a planning obligation would be used to secure affordable housing provision (either with physical dwellings on site or a financial contribution to enable them to be delivered elsewhere), contributions towards education provision where the development would result in the local school exceeding its capacity, improvement works to the existing highway or anything else which is relevant to the development.

2.4 Planning obligations are also used in Mid Devon to ensure that new agricultural workers dwellings are tied to the land holding on which the dwelling was justified to prevent the two being disposed of separately at a later date.

2.5 Mid Devon have been using standard planning obligations for public open space and air quality for a number of years where developers largely pay the required financial contribution upfront to avoid delays in the application process and unnecessary legal fees.

## 3.0 **The expenditure of financial contributions collected under a planning obligation.**

- 3.1 Up until April 2014, the monies collected from developments towards Public Open Space were directed pooled for spend in 'catchment areas'. In many instances this was the parish in which the development was located, but in more rural parts of the district the 'catchment area' could include an area covering up to 7 parishes. Parish Councils and other community groups are able to request funding for projects which accord with the SPD and are invited to discuss any proposals with the CIL/s106 Monitoring Officer Juliet Hamlyn-Payne by email [jhamlyn-payne@middevon.gov.uk](mailto:jhamlyn-payne@middevon.gov.uk) or by post to Development Management, MDDC, Phoenix House, Phoenix Lane, Tiverton EX16 6PP
- 3.2 The Council can only commit the contributions collected from developments which have actually commenced on site. Although many contributions are collected before planning permission is granted, if the development is never commenced the Council may need to pay back those monies to the developer at a later date.
- 3.3 With regards to the contributions collected towards air quality in either Cullompton or Crediton, this is held in two separate 'pots' and is available for the Council to spend on projects in the respective areas where it could be demonstrated that it would lead to an improvement in air quality in that area.
- 3.4 However, since April 2014 a Local Planning Authority can no longer use planning obligations to pool more than five contributions for infrastructure by project or type. This has meant that we are no longer able to collect money for spending in a catchment area as more than 5 obligations have already been entered into by infrastructure type. Instead, there is only opportunity to pool up to 5 obligations by specific project. Contributions are now requested towards very specific projects e.g. previously we could collect contributions for development in Cullompton to be spent on POS within the catchment area of Cullompton but now we need to collect contributions for a specific project such as providing youth and/or fitness outdoor equipment at Linear Park, Cullompton, and only 5 planning obligations can be used to fund the same project.
- 3.5 Parish Councils and other community groups are urged to come forward at an early stage if they are considering a scheme to provide or improve public open space in their area so that we can start collecting contributions towards them, as it may take a long time particularly in some rural areas.
- 4.0 **The collection of financial contributions in future.**
- 4.1 This change in the way contributions are collected is as a result of the the Community Infrastructure Levy Regulations which came into force in April 2010. These reforms restricted the use of planning obligations and clarified the relationship between planning obligations and the Community Infrastructure Levy. The levy is a local charge that local authorities in England and Wales can choose to charge on new developments in their area to fund infrastructure.
- 4.2 MDDC will be introducing a CIL levy and the draft charging schedule is programmed for submission to an Inspector along with the local Plan Review in March 2017. The Councils draft charging schedule proposes to charge development a community infrastructure levy on a £ per square metre basis for infrastructure provision across the whole district, with the exception of strategic scale development sites (Tiverton eastern urban extension, north west and east Cullompton urban extensions and J27 M5 motorway). Once adopted, the community charging levy will replace the existing system of collecting financial contributions outside the specific sites listed above. 15% of monies collected for infrastructure under CIL will go to the community. This rises to 25% where a neighbourhood plan has been adopted.

- 4.3 However, planning obligations will continue to play an important role in making individual developments acceptable. Affordable housing will continue to be delivered through planning obligations rather than the levy. Local authorities can also continue to pool contributions for measures that cannot be funded through the levy.
- 4.4 In June 2016 Cabinet took a decision to introduce planning obligation monitoring fees so that the taxpayer does not subsidise the monitoring of developer legal agreements. Once the Community Infrastructure Levy is introduced, the regulations also allow for a 5% deduction to be taken towards the cost of its administration. These mechanisms will be used to ensure the cost of monitoring and administration of S106 agreements and CIL is met by developers /landowners benefitting from permission rather than Mid Devon taxpayers.

**Contact for more Information:**

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**Circulation of the Report: Cllr Richard Chesterton**

**List of Background Papers:**

Community Infrastructure Levy Regulations 2010  
Cabinet December 2014  
Cabinet June 2016